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IN THE
COURT OF APPEALS OF INDIANA

ROBERT D. EDDIE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0612-CR-741
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0604-FC-52

June 29, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Robert D. Eddie (Eddie), appeals his conviction for battery, Ind. Code § 35-42-2-1(a)(3), a Class C felony.

We affirm.

ISSUE

Eddie raises one issue on appeal, which we restate as follows: Whether the sentence imposed by the trial court is inappropriate in light of the character of the offender and the nature of the offense.

FACTS AND PROCEDURAL HISTORY

Eddie and William Baldwin (Baldwin) were employees at the Union Tank Car Company, located in Lake County, Indiana. At some time prior to March 17, 2006, Eddie had borrowed money from Baldwin but failed to repay him in a timely manner. On March 17, 2006, Eddie and Baldwin were in the company parking lot when Baldwin asked him if he had any payment to make toward his loan obligation. Receiving a negative response from Eddie, Baldwin remarked, "[y]ou people make me sick" and walked off. (Transcript p. 12). Eddie, feeling racially provoked, approached Baldwin from behind and sprayed mace directly into Baldwin's left eye. He then grabbed Baldwin and pushed him to the ground. Baldwin received medical attention for the injury to his eye.

On April 27, 2006, the State filed an Information against Eddie, charging him with Count I, attempted robbery, I.C. §§ 35-42-5-1; 35-41-5-1; and Count II, battery, a Class A misdemeanor, I.C. § 35-42-2-1. On September 27, 2006, the State filed an

amendment, adding Count III, battery, I.C. § 35-42-2-1(a)(3), a Class C felony. That same day, Eddie pled guilty to the amended charge in exchange for the State's agreement to dismiss Counts I and II and to refrain from charging him with an amended Count of robbery as a Class B felony. Pursuant to the terms of the plea agreement, the parties would be "free to fully argue their respective positions as to the sentence to be imposed." (Appellant's App. p. 25).

On November 16, 2006, a sentencing hearing was held. During the hearing, the trial court found Eddie's two prior felony convictions as an aggravating factor, while his acceptance of responsibility constituted a mitigating factor. Concluding that the aggravator and mitigator balanced, the trial court sentenced Eddie to a four-year sentence, the advisory sentence for a Class C felony. *See* I.C. § 35-50-2-6.

Eddie now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Eddie contends that the trial court's imposed sentence is inappropriate in light of his character and nature of the crime under Indiana Appellate Rule 7(B). Specifically, Eddie claims that the trial court erred in weighing the mitigator and aggravator.

In the instant case, Eddie was sentenced under the present advisory sentencing scheme. We are awaiting guidance from our supreme court as to how appellate review of sentences under the new advisory scheme should proceed and whether trial courts must continue issuing sentencing statements explaining the imposition of any sentence other than an advisory sentence. *See Gibson v. State*, 856 N.E.2d 142, 146-47 (Ind. Ct. App. 2006). Whether or not sentencing statements are required, such statements are helpful to

this court in determining the appropriateness of a sentence under Indiana Appellate Rule 7(B). *Id.* at 147. The trial court here did issue a sentencing statement, and we will utilize it to assist us in determining whether the sentence imposed here was inappropriate. *Id.* Under Indiana Appellate Rule 7(B), we may revise a sentence that we conclude is inappropriate in light of the nature of the offense and the character of the offender. We perform this review while considering the findings made by the trial court in its sentencing statement. We understand that this is, by necessity, part of our analysis here, but it does not limit the matters we may consider. *See Gibson*, 856 N.E.2d at 149; *see also McMahon v. State*, 856 N.E.2d 743, 750 (noting that review under Rule 7(B) is not limited "to a simple rundown of the aggravating and mitigating circumstances found by a trial court.").

With regard to the nature of the crime, we note that Eddie physically attacked a fellow employee from behind by spraying mace in his eye and pushing him to the ground. Although Eddie claimed that he was provoked by Baldwin's purported racial statement, we do not find that this provocation, if it indeed can be characterized as such, justified Eddie's violent response. Furthermore, explaining his attack, Eddie informed the trial court that his "intentions were to exact or reciprocate [the] degrading, humiliating violation [Baldwin] subjected me to." (Tr. p. 11).

Even though he entered into a plea agreement with the State, contrary to Eddie's contention, we do not conclude that this factor should be given any mitigating weight. Generally, a guilty plea is accorded mitigating weight. Where the State reaps a substantial benefit from the defendant's act or pleading guilty, the defendant deserves to

have a substantial benefit returned. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. *Payne v. State*, 838 N.E.2d 503, 508 (Ind. Ct. App. 2005), *trans. denied*. Here, the record reflects that Eddie already received a benefit by pleading guilty in that the State dismissed two charges and refrained from filing a new, amended charge. Accordingly, the trial court properly refused to award his guilty plea any weight.

In light of his character, we note that in addition to several arrests, Eddie has two prior felony convictions for auto theft and robbery, which were committed approximately twelve years ago. Even though Eddie now asserts that these convictions are too remote in time to be considered, we are mindful that he was initially charged with a similar charge of robbery. Moreover, Eddie not only has further outstanding warrants pending for his arrest in Indiana and Michigan, he also admitted to currently using marijuana on a daily basis.

Next, Eddie attempts to persuade this court to mitigate his sentence because he "eloquently" expressed his remorse. (Appellant's Br. p. 8-10). While he nevertheless appeared to express apologies for Baldwin's physical injuries, in the same breath, Eddie continued to blame Baldwin by provoking the attack with an alleged racial statement and even alleges that he didn't "believe [Baldwin's] injuries were substantiated as serious bodily injuries." (Tr. p. 12). We acknowledge that substantial deference is given to a trial court's evaluation of remorse as the trial court is in the best position to assess the genuineness of the remorse. *Corralez v. State*, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004). However, given the highly qualified nature of Eddie's expressed remorse and his

attempts to justify his behavior by blaming Baldwin, the trial court appropriately declined to award the mitigator great weight.

Finally, even though requested by Eddie, the trial court appropriately did not accord any weight to possible hardship that will accrue to his daughter as a result of his incarceration. Many people convicted of serious crimes have children and, absent special circumstances, trial courts are not required to find that their incarceration will work an undue hardship on those dependents. *Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999). Here, the record shows that Eddie's daughter lives with her mother, to whom Eddie is not married. Nothing in the record indicates that the child's mother is not capable of working or supporting her. *See Ware v. State*, 816 N.E.2d 1167, 1178 (Ind. Ct. App. 2004).

Mindful of the trial court's findings and our evaluation of Eddie's character and nature of the crime, we conclude that the trial court's imposition of the four-year advisory sentence is not inappropriate. *See* Ind. Appellate Rule 7(B).

CONCLUSION

Based on the foregoing, we conclude that the trial court properly sentenced Eddie.

Affirmed.

NAJAM, J., and BARNES, J., concur.